

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

**CRIMINAL REVISION NO.608 OF 2006**

DATE OF DECISION: FEBRUARY 22, 2007

Balwant Singh Dhillon

.....Petitioner

VERSUS

State of Punjab and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. Veneet Sharma, Advocate,  
for the petitioner.

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RANJIT SINGH, J.

Though convicted by the trial Court, the respondents stand acquitted by the appellate Court for offences under Sections 467, 120-B, 471, 420 IPC. The petitioner has impugned the said finding by way of present revision.

The facts, in brief, leading to filing of the present revision petition are that one Balwant Singh owned 10 Killa 4 Kanal 8 Marla of land in revenue estate of Village Kasel, District Amritsar. While migrating to Canada, he had given this land on lease. It is alleged that Ram Singh, respondent, had forged his power of attorney in connivance with other respondents like Dilbagh Singh, Swinder Singh, Pal Singh etc. and used the same for selling 42 Kanal 3 marla of land to Harbans Singh on 24.1.1994. They were accordingly prosecuted and

after trial, sentenced to undergo 4 years RI and to pay a fine of Rs.2,000/- and in default of payment of fine, to further undergo RI for three months besides other punishments.

Respondent Nos.2 to 5 herein filed appeal against the said order of their conviction and award of sentence, which is allowed by the Additional Sessions Judge vide judgment dated 5.11.2005. The petitioner, who was complainant, has filed this revision against the said order of acquittal.

Appellate Court acquitted Dilbag Singh, respondent, as no charge was framed against him. The counsel for the petitioner could not say much to assail the finding of the appellate Court against Dilbag Singh. Accordingly, the acquittal of Dilbag Singh does not call for any interference. The counsel for the petitioner is rather vehement in his attack on the remaining finding of the appellate Court. The counsel submits that apart from other evidence, the prosecution placed reliance on a judgment of the civil Court whereby power of attorney was held to be a forged document. It is further submitted that the Appellate Court has wrongly discarded the evidence of report of hand-writing expert, which, as per law, would be admissible per-se in view of the provisions of Section 293 Cr.P.C. even without examination of the author of the report. Counsel has relied on two judgments reported as **V.M.Shah Vs. State of Maharashtra and another**, 1995 (3) R.C.R. (Criminal) 459 and **M/s Karam Chand Ganga Prasad and another Vs. Union of India and others**, 1970 (3) Supreme Court Cases 694. V.M.Shah (supra) was a case where a person was convicted under Section 630 of the Companies Act, 1956 for not vacating the flat given to him by the

Company. The Company had also filed a civil suit wherein it was held that the respondent was direct tenant from the landlord and not being a tenant through the Company. It is in this context that the observation was made that such a finding was required to be taken into consideration by the Appellate Court while dealing with the appeal in regard to conviction under Section 630. This judgement was in peculiar facts of the case. Otherwise, in **M.S.Shariff Vs. State of Madras**, AIR 1954 SC 397, it was held that between civil Court and the criminal proceedings, the criminal matters should be given precedence. It is also noticed in this judgment that no hard and fast rule can be made out but the possibility of conflicting decisions in civil and criminal courts is not a relevant consideration. Law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other or even relevant except for certain limited purposes. Accordingly, the ratio of V.M.Shah's case (supra) would not strictly apply to the facts of the present case. M/s Karam Chand Ganga Prasad's case (supra) was a case where writ petition was dismissed on the ground of pendency of criminal proceedings. While commenting on the legality of such an order, it was observed that decisions of the civil Court are binding on the criminal Courts. This was a case of export of maize consequent on removal of restriction. After seizure of the maize, prosecution of person responsible for export was commenced. Writ petition, challenging the seizure and prosecution was filed, wherein such an observation was made. In this case, apparently the question in regard to the admissibility of judgment of civil Court was not at all in issue. Contrary to this, the judgment of **Harchand Singh and**

**others Vs. State of Haryana**, 1982 (2) CLR 250 referred to and relied upon by the Appellate Court would rather be attracted in the facts and circumstances of this case. In this case, it was observed that the State could not show if the judgment in question was relevant under Sections 40 to 43 of the Indian Evidence Act. A similar argument was raised that there would be a possibility of different judgment in civil and criminal proceedings but still it was held that there is no bar for civil Court and Criminal Court, coming to different finding on the same facts. There is no legal infirmity in the reasoning given by the Appellate Court in not placing reliance on the judgment of the civil Court.

The Appellate Court has also discussed in detail the aspect of admissibility of report of hand-writing expert per-se in view of the provisions of Section 293 Cr.P.C. This, Section applies only to certain experts like Chemical Examiner or Assistant Chemical Examiner, Government Chief Inspector of Explosives, Director of Finger Print Bureau, Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory etc. In the case of **Nirmal Vs. State of Punjab**, 2001 (4) RCR (Criminal) 622, it is held that report of the hand-writing expert, even if it has been given by the expert working in Forensic Science Laboratory, would not be per-se admissible under Section 293 Cr.P.C. unless the author of said report is summoned and examined as a witness. It may require notice that such a report if made per-se admissible would result in denying the accused of a very valuable right of cross-examining an expert to test his veracity. If such a material is to form a basis of conviction, then one should be given a fair chance to defend oneself

by way of cross-examination of the witness. No interference as such is called for on this ground as well. It was otherwise found by the Appellate Court that if these two pieces of evidence are excluded from consideration, there would remain an evidence of Balwant Singh. The Appellate Court rightly noticed the fact that the respondent had examined one Fateh Chand Sharma, Finger Print and Handwriting Expert in their defence as DW1. He had examined and compared the disputed signatures of Balwant Singh and gave evidence that the disputed as well as admitted signatures were of the same person. He was subjected to lengthy cross-examination but nothing could be achieved even thereafter. Once the respondents have sufficiently established in their defence that there was no forgery noticed in the alleged power of attorney, this evidence would definitely go to cast doubt on the prosecution story in the light of the fact that prosecution did not prove sufficiently with reliable and cogent evidence the aspect of forgery. Thus, no exception can be taken to the view taken by the Appellate Court in acquitting the respondents by doubting the prosecution story and for giving benefit of doubt. Accordingly, no interference in the impugned order is called for.

The present revision is hereby dismissed.

**February 22,2007**  
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**( RANJIT SINGH )**  
**JUDGE**